

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	September 27, 2017
Time of Incident:	19:45 p.m. ¹
Location of Incident:	XXXX N. Kedzie Ave.
Date of COPA Notification:	September 28, 2017
Time of COPA Notification:	11:31 p.m.

On September 27, 2018 Sergeant A, responded to a call for a police officer needed at the XXXXX XXX store at XXXX N. Kedzie Ave. The individuals involved: store owner Subject 1, Subject 1's nephew²/employee Subject 2, customer Subject 3, ex-employee Subject 4³, and an unidentified male were present in the store when Sergeant A arrived.

Police were called because of a dispute over the ownership of a cellphone that Subject 4 allegedly sold to Subject 3. The dispute escalated until Subject 1, along with Subject 2, claimed that Subject 4 was trying to take things out of the store that did not belong to him, and demanded that Sergeant A stop Subject 4 from removing other items from the store.

Subject 4 left the store, at Sergeant A's request, and then returned to the store to retrieve his personal keys. Subject 1 became upset, believing Subject 4 was trespassing, and requested that Sergeant A arrest Subject 4 for doing so. When Sergeant A refused to make the arrest, Subject 2 became angry and, according to Sergeant A, threatened Sergeant A when he stated that he was going to kick her ass. Sergeant A called for backup and Subject 2 was soon arrested for aggravated assault of a police officer.

Subject 2 claimed that he was placed under arrest without justification because he never said that he was going to kick Sergeant A's ass; instead, he claimed that he said that she was the worst officer, and that she did not perform her duties. Subject 2 also claimed that Sergeant A failed to return his phone to him upon release. Subject 1 claimed that Sergeant A failed to keep Subject 4 from removing paperwork, keys and other items from the XXXXX XXX store.

II. INVOLVED PARTIES

¹ This time is based on the arrest report. The COPA face sheet reports 20:30.

² This information was learned from the bond receipt produced when Subject 1 bailed Subject 2 out of jail.

³ Subject 1 described Subject 4 as a contract buyer who was going to purchase the store, however the purchase fell through.

Involved Officer #1:	Sergeant A, Star# XXXX, Employee ID# XXXXX, Date of Appointment XXXX XX, 1992, Sergeant, Unit 0XX, DOB XXXXXXXXX XX, 1965, Female, Hispanic
Subject #1:	Subject 1, DOB May XX, 1970, Male, Asian
Subject #2:	Subject 2, DOB May XX, 1985, Male, Asian
Subject #3:	Civilian 1, DOB December XX, 1989, Female, White Hispanic

III. ALLEGATIONS

Officer	Allegation	Finding
Sergeant A	<p>1. Sergeant A failed to stop an ex-employee from removing paperwork, keys and other items from the XXXXX XXX store located at XXXX N. Kedzie Ave. in violation of Rule 5;</p> <p>2. Sergeant A placed Subject 2 under arrest without justification in violation of Rule 2, the Fourth Amendment of the United States Constitution and Section 6 of the Illinois Constitution; and</p> <p>3. Sergeant A failed to return Subject 2's phone to him upon release in violation of Rule 5.</p>	UNFOUNDED UNFOUNDED UNFOUNDED

IV. APPLICABLE RULES AND LAWS

Rules
<ol style="list-style-type: none"> Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department. Rule 5: Failure to perform any duty.

Federal Laws

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1. **The Fourth Amendment:** states, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”
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State Laws

1. **720 ILCS 5/12-1(a):** A person commits an assault when, without lawful authority, he or she knowingly engages in conduct which places another in reasonable apprehension of receiving a battery.
2. **720 ILCS 5/12-2(b) (4.1) (i):** Aggravated Assault: (b) Offense based on status of victim. A person commits aggravated assault when, in committing an assault, he or she knows the individual assaulted to be any of the following: (4.1) A peace officer, fireman, emergency management worker, or emergency medical services personnel: (i) in performing his or her official duties.
3. **Section 6 of the Illinois Constitution:** states, “The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.”

V. INVESTIGATION⁴

a. Interviews

1. Recorded Interview/Subject 1

On October 4, 2017, Investigators interviewed Subject 1 regarding the event that occurred on September 27, 2017 at about 7:45 p.m. Subject 1 is the owner of the XXXXX XXX store at XXXX N. Kedzie. Subject 1 was at the store with Subject 2 and Subject 4 who was accompanied by two unidentified men.⁵ According to Subject 2, Subject 4 was a business associate who was planning to purchase the business; however, the sale fell through. Subject 2 stated that Subject 4 and the gentlemen who were with him started bullying and taking things from the store.

There was also a customer present, identified as Subject 3, who Subject 1 described as being drunk. Subject 1 said that Subject 4 took Subject 3's phone, and then would not give it back to him. Subject 1 also said that Subject 4 claimed that Subject 1 owed him 60 days of pay.

⁴ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

⁵ One of the two men left before the beginning of the Video/Audio of the XXXXX XXX store and is not mentioned any further.

According to Subject 1, he, Subject 4, and Subject 3 continued to argue. Eventually, Subject 1 decided to call the police. A female, Hispanic Sergeant arrived, was rude, and appeared to be on the side of Subject 4. Subject 1 told the Sergeant that he wanted her to cause Subject 4 to give Subject 3 his phone back, however the Sergeant refused to do so. The Sergeant reasoned that she did not know whether or not the phone in question belonged to Subject 3. According to Subject 1, the Sergeant then told him to let Subject 4 "take his stuff", to which Subject 1 replied that it was not his stuff. The Sergeant told the group that Subject 4 needed receipts or to go to court if he wanted to take anything out of the store.

Subject 1 stated that he then asked the Sergeant to take Subject 4 and the unidentified male out of the store, and stated that they were trespassing. The Sergeant walked out of the store and told them to leave. The Sergeant and Subject 4 were talking outside the store and Subject 1 asked the Sergeant to make sure that Subject 4 and the unidentified male did not come back in, which was all Subject 1 wanted the Sergeant to do. Then the Sergeant went and sat in her vehicle.

After a few minutes, Subject 4 came to the door and said he forgot his keys. Subject 1 said he told Subject 4 to wait there and to let him bring Subject 4 his key because he was not allowed to come into the store. However, Subject 4 said he was not going to wait, entered the store, and walked over to the location where the keys were located. Subject 1 then went outside to the Sergeant and reported Subject 4 had entered the store against her order. The Sergeant then told Subject 1 that she told him to go inside. Subject 1 replied that the Sergeant was supposed to go inside with Subject 4 and now had to arrest him for trespassing.

Subject 1 also stated that Subject 4 removed paperwork from the drawers of the store that contained the names and other personal information of customers. The Sergeant said that she was not going to get them back from him.

Subject 1 then stated that Subject 2 went outside to speak to the officer and said something to the effect that she was "the worst officer" and did not perform her duties. The Sergeant was sitting in her vehicle at the time and the parties were speaking through the window. The Sergeant reached through the window, pushed Subject 2 away from the vehicle, got out of the car, and told Subject 2 to put his hands on the car. Subject 1 asked what he did, and the Sergeant took out her taser. The Sergeant then called for additional officers.

The Sergeant put handcuffs on Subject 2 and took Subject 2 to jail. Subject 1 reiterated that Subject 2 told the Sergeant that she was "the worst officer", and Subject 1 said he agreed with him. When Subject 1 was asked if he heard Subject 2 say or threaten to kick the Sergeant's⁶ ass, he said no. When the investigator asked Subject 1 whether he heard Subject 2 say anything else offensive to the Sergeant⁷, Subject 1 said yes, that the Sergeant was the worst police officer.

Subject 1 stated that the Sergeant made Subject 4's wife, Subject 5 sign the complaint. However, Subject 2 claimed that

⁶ Investigator said, "supervisor" instead of "Sergeant" in the interview, but was referring to the Sergeant.

⁷ Investigator said, "police officer" instead of "Sergeant" in the interview, but was referring to the Sergeant.

Civilian 1 did not see the incident, and was far away at the time. Subject 1 also stated that Subject 2 recorded the incident on his cellphone which the Sergeant took as evidence.⁸

2. Recorded Interview/Subject 2

On October 4, 2017 Investigators interviewed Subject 2 regarding the event that occurred on September 27, 2017 at about 7:45 p.m. Subject 2 is the nephew and employee of Subject 1.

Subject 2 said his first day of work at the XXXXX XXX store was on the date of the incident. Subject 2's statement was consistent with Subject 1's,⁹ and he confirmed that he recorded the incident on his cellphone.

At one point Subject 2 told the Sergeant that if something happens then she will be responsible for not helping them and letting Subject 4 leave with the phone.

Later, after Subject 4 re-entered the store to retrieve his keys, Subject 2 and Subject 1 went outside and spoke with the Sergeant who was sitting in her vehicle. Subject 1 told the Sergeant that he wanted Subject 4 arrested because he was trespassing when he went back into the store to retrieve his keys after the Sergeant told him not to. The Sergeant refused to arrest Subject 4, and said she could not make a police report because Subject 4 was not trespassing. Subject 2 stated that at that point he got upset and said, "You are the worst officer, and very dishonest, I have never seen anybody like you before" and "you are the worst officer I have ever seen."

The Sergeant got out of the vehicle and told Subject 2 to turn around and put his hands...,¹⁰ and said she wanted to arrest him." Subject 2 asked the Sergeant why she was arresting him and the Sergeant pulled out her taser and said something to the effect that Subject 2 should turn around or she would shoot him. Subject 2 stated that the Sergeant had her taser pointed at Subject 2 until other officers arrived and handcuffed Subject 2. Subject 2 said that Civilian 1, a witness, arrived after he was arrested.

The Police took Subject 2's cellphone and did not give it back to him when he was released because it was being inventoried for evidence.

3. Recorded Interview/Sergeant A

On February 8, 2018, Investigators interviewed Sergeant A regarding the event that occurred on September 27, 2017 at about 7:45 PM. Sergeant A, without a partner, responded to a call regarding a disturbance at the XXXXX XXX store at XXXX N. Kedzie. When Sergeant A arrived, the owner of the store, the arrestee, the caller, and Civilian 1 were in the store.¹¹ Sergeant A stated that the caller¹² said the owner¹³ of the store refused to pay him a couple weeks of past due salary. Sergeant A said there was nothing she could do to help them with that, and

⁸ Despite several attempts, neither Subject 1 nor Subject 2 would provide a copy of any video from Subject 2's cellphone.

⁹ Subject 2 refers to Subject 1 as Subject 1.

¹⁰ The rest of Subject 2's sentence is unintelligible.

¹¹ The account of who was in the store when Sergeant A arrived is inconsistent with the statements by Subject 1 and Subject 2, and it is inconsistent with the store's video footage.

¹² Referring to Subject 4; however, it was Subject 1 who called the police.

¹³ Referring to Subject 1.

the store owner asked her to get the caller to leave. The Sargent asked him to leave, but the caller¹⁴ wanted to take some property he was storing there with him.¹⁵ Sergeant said she could not help the caller in this situation because it was a dispute over property that needed to be resolved in court.

Sergeant A asked the caller to leave but the caller told her he had forgotten his keys. Sergeant A said she went back into the store with the caller to retrieve his keys and the owner got upset.¹⁶ The store owner wanted Sergeant A to arrest the caller but she said she could not, he worked there and he forgot his keys. Sergeant A expressed that everybody wanted the guy¹⁷ to leave, but they wanted to keep the keys for some reason. Sergeant A did not see the caller take anything from the store except his keys.

After the caller retrieved his keys, the owner came out and started screaming that he wanted the caller arrested for trespass. Sergeant A then said that the guy that was arrested, "Subject 2"¹⁸ said he was going to kick her ass, started walking away, and then would not put his hands behind his back when instructed. Sergeant A grabbed the arrestee and said he was under arrest and called for additional officers to assist. When the additional officers arrived, they put handcuffs on Subject 2 and transported him to the 17th District for processing.

At the time, both Sergeant A and the arrestee were outside on the sidewalk along with the store owner, the caller¹⁹ and Civilian 1.²⁰ Sergeant A said that Civilian 1 heard the arrestee threaten to kick her ass.

When Subject 2 asked about the cell phone, Sergeant A told him that the police were holding the phone for evidence. Sergeant A stated that it was not her responsibility to return the phone to Subject 2 when he was released. It was also determined that Sergeant A did not view the video and never applied for a search warrant to do so.

4. Recorded Interview/Subject 4

On February 16, 2017 Investigators interviewed Civilian 1 regarding the event that occurred on September 27, 2017 at about 7:45 PM. Civilian 1 was the girlfriend of Subject 4.

Civilian 1 received a call from Subject 4²¹ who stated that the owner of the store had kicked him out of the store, letting him know he was terminated. Civilian 1 stated that Subject 4 had worked there for a couple of months and never received any compensation. Civilian 1 also stated that Subject 4 had \$1,000 to \$2,000 worth of personal items in the store, and Subject 1²² would not let him get his things out of the store.

¹⁴ Sometimes referred to as the employee.

¹⁵ A bed, fish tank, cloths, etc...

¹⁶ Video footage shows that the caller, Subject 4, returned to the XXXXX XXX store and retrieved the keys alone.

¹⁷ Referring to Subject 4.

¹⁸ Referring to Subject 2.

¹⁹ Sergeant A said he may have been seated in his vehicle.

²⁰ This is inconsistent with the statements made by Subject 1, Subject 2 and Civilian 1.

²¹ Subject 4.

²² Subject 1.

When Civilian 1 arrived at the scene, a police officer²³ was already at the XXXXX XXX store.²⁴ Subject 4 was already outside and the police officer was in her vehicle. Subject 4 and Civilian 1 had a conversation with Sergeant A during which they asked for help getting Subject 1 to let them remove Subject 4's personal property from the store. The police officer told them that she could not help them with that and that they would have to go to court.

Subject 1 soon came out of the store and approached Subject 4, Civilian 1 and Sergeant A. A person that Subject 1 referred to as "the gentleman"²⁵ was also present. Civilian said that the gentleman started charging at her, yelling profanity and lies, and then started yelling at Subject 4. Then, the police officer said Civilian 1 and Subject 4 had to go. The gentleman then started speaking to the police officer, and according to Civilian 1, she heard the gentleman say to the police officer, "I'm going to kick your ass." According to Civilian 1, the gentleman, who was videotaping, was standing close to the police vehicle and had a hostile, angry demeanor. Civilian 1 stated that the gentleman seemed to have "tunnel vision" and that she was afraid for the police officer. The police officer then got out of her car and called for backup. The gentleman was arrested after backup arrived.

b. Digital Evidence

1. Video/Audio of XXXXX XXX store²⁶

When Sergeant A arrived, store owner Subject 1 and ex-employee Subject 4, were arguing about the ownership of a cellphone allegedly owned by a Subject 3. Because Subject 4 appeared to be intoxicated, Sergeant A told him to come back the next day when he was sober to resolve the issue.²⁷ Soon after, Subject 4 walked out of the store with what appeared to be a bundle of papers. Then, Subject 2 and Subject 1 spoke to Sergeant A in loud voices until she stated, "I am not a judge and this is not a police matter." Subject 2 said that Subject 4 had their phone and asked if Sergeant A was going to help them get the phone back. At this point Subject 2 has a phone in his right hand and seems to be recording the incident. Subject 2 continued to loudly argue with Sergeant A, and once stated that Sergeant A refused to help them.

Subject 4 soon returned and said he wanted to remove more items from the store. Sergeant A stated that if he had receipts for what he wanted to remove, he could do so. Subject 4 did not appear to have the required receipts. Subject 4, Sergeant A, and the unidentified male walked out of the store and there is more discussion among the group that is unintelligible.

In another section of video, Subject 1 swept out the store while he argued with another person who stood outside, but was not visible. It sounded as though the men are arguing about

²³ aka Sergeant A.

²⁴ This is inconsistent with Subject 2's claim that Civilian 1 arrived after he was arrested.

²⁵ aka Subject 2 and Subject's cousin.

²⁶ The video was presented to COPA by Subject 1 and Subject 2 in sections. The sections were not in order. However, the COPA investigator made every attempt to report the pieces of information from the videos in their proper sequence. Only the sections of video with relevant content are summarized. The parties are identified by name in this summarization. (Att. 26)

²⁷ According to the Arrest Report for Subject 3, Att. 46, Subject 3 was arrested earlier that day for Drinking Alcohol on the Public Way.

money. In the next section Subject 4 walked into the store, occupied now by Subject 1 and Subject 2, and removed what appeared to be keys from a countertop, and left immediately after. Subject 1 then walked outside and started yelling something about Subject 4 coming inside the store. All three men left the store and are now out of view of the store camera. There was audible yelling but it is unintelligible.

c. Documentary Evidence

1. Arrest Report/Subject 2²⁸

An Arrest Report was generated in response to the incident in question under RD# XXXXXXXX. The incident narrative contained in the arrest report for Subject 2 is consistent with Sergeant A's recorded statement. It stated that Subject 2 threatened to kick Sergeant A's ass. The charges brought against Subject 2 included Aggravated Assault of a Peace Officer/Volunteer and Resisting a Police Officer or Aiding Escape.

Sergeant A attested to this report.

2. Inventory Report²⁹

An Inventory Report was generated in relation to the incident in question under Inventory No. XXXXXXXX. It lists one item, one Apple iPhone belonging to Subject 2. The report indicated that the item was to be Held for Investigation and/or Evidence.

3. Bail Receipt³⁰

This bail receipt stated that the person who paid the bail for Subject 2 was Subject 1. It described Subject 1 as Subject 2's uncle.

VI. ANALYSIS

The Burden of Proof COPA must satisfy to support the findings for the allegations discussed below, is Preponderance of the Evidence.

COPA recommends the finding for **Allegation #1**, that Sergeant A failed to stop ex-employee from removing paperwork, keys and other items from the XXXXX XXX store located at XXXX N. Kedzie Ave. in violation of Rule 5, be **Unfounded**.

There is no evidence that Subject 4 took anything from the store other than the pile of unidentified papers, and a set of keys which no one disputed belonged to Subject 4.³¹ Because there was an ambiguous business relationship between Subject 1 and Subject 4, , the ownership of the papers Subject 4 removed from the store were not clearly defined. .

²⁸ Att. 5

²⁹ Att. 7

³⁰ Att. 23

³¹ Subject 1 discussed in his interview that he believed Subject 4 had a store key, which was not returned; and that he had the locks changed the next day without event.

With that in mind, there is no evidence that there was any criminal violation by any of the involved parties. Therefore, Subject 1's allegation is unfounded because Sergeant A's actions were justified in that this was a civil matter and not within the scope of her duties.

COPA recommends the finding for **Allegation #2**, that Sergeant A placed Subject 2 under arrest without justification in violation of Rule 2, the Fourth Amendment of the United States Constitution and Section 6 of the Illinois Constitution, be **Unfounded**.

Based on the statements given by the complainants, Sergeant A and the witness, Subject 2 became upset when Sergeant A refused to arrest Subject 4 for trespassing. The matter escalated and Sergeant A arrested Subject 2 for Aggravated Assault based on 720 ILCS 5/12-1(a) and 720 ILCS 5/12-2(b)(4.1)(i), after Subject 2 made a statement to Sergeant A that she viewed as a threat of violence. However, there are conflicting accounts as to what Subject 2 said to Sergeant A when he approached her while she sat in her vehicle.³²

Subject 1 claimed that Subject 2 said something to the effect that Sergeant A, "was the worst officer." Subject 2 claimed that he said, "You are the worst officer, and very dishonest, I have never seen anybody like you before" and "you are the worst officer I have ever seen."

However, both Sergeant A and Subject 4 reported that Subject 2 stated that he was going to kick Sergeant A's ass. According to Civilian 1, Subject 2 stood close to the police vehicle and had a hostile, angry demeanor. Civilian 1 also stated that Subject 2 seemed to have "tunnel vision", and that she was afraid for the police officer.

The evidence suggested that it is more likely than not that Subject 2 told Sergeant A that he was going to kick her ass. One of the most telling pieces of evidence is that during Subject 4's recorded interview she offered, without prompting, the fact that when she arrived on scene she heard Subject 2 tell Sergeant A that he was going to kick her ass.

Civilian 1 also described Subject 2's demeanor as angry and hostile. The in-store video provided by Subject 1 and Subject 2 showed Subject 2 become hostile toward Sergeant A during the discussion about the phone, prior to the alleged threatening statement. The video documented Subject 2 state, among other things, that Sergeant A refused to help them.³³ It also showed Subject 2 begin to record the incident and point his finger at Sergeant A as he spoke to her.

Another important point that was considered is the relationship between Subject 1 and Subject 2. Not only is there an employer/employee relationship, but Subject 1 is also Subject 2's uncle, which suggested that the possibility of bias must also be considered.

Furthermore, Subject 2 never mentioned in his recorded interview that he was accused of threatening to kick Sergeant A's ass, not even to deny the allegation. Subject 1 had to be prompted to talk about the alleged statement; and it is unreasonable to believe Subject 2 was

³² Sergeant A stated in her interview that she was standing outside when Subject 2 threatened her. However, Subject 1 and Civilian 1 stated that when the actual threat was made, Sergeant A was sitting in her car and then got out.

³³ Marked 0b29c0cd-383f-4a24-9b50-06655c0b7c62 at about 7:11

unaware of alleged statement since making the statement to Sergeant A was the main reason he was arrested. Subject 2 never suggested he never knew about the statement, nor did he ever flat out deny the allegation. He just claimed he did not recall saying anything like that, "especially since she is a police officer."

Lastly, Subject 2 failed to provide COPA with the cellphone video that he claimed contained proof, after it was reported by Subject 1 that Subject 2 was again in possession of his cellphone.

Therefore, Subject 2's allegation is unfounded because the statement given by Civilian 1, which was consistent with the statement given by Sergeant A, was the more credible.

COPA recommends the finding for **Allegation #3**, that Sergeant A failed to return Subject 2's phone to him upon release in violation of Rule 5, be **Unfounded**.

Based on Subject 2's statement, Subject 1's statement, and the Video/Audio Surveillance of the XXXXX XXX store, Sergeant A had sufficient reason to believe that Subject 2 recorded the incident in question with his cellphone. After Subject 2 was arrested, Sergeant A confiscated his cellphone and inventoried the cellphone as evidence.

Therefore, Subject 2's allegation is unfounded because there is no evidence that it is within the scope of Sergeant A's duties to return evidence to arrestees when there is no longer a need for the evidence.

VII. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding
Sergeant A	1. Sergeant A failed to stop ex-employee from removing paperwork, keys and other items from the XXXXX XXX store located at XXXX N. Kedzie Ave. in violation of Rule 5. 2. Sergeant A placed Subject 2 under arrest without justification in violation of Rule 2, the Fourth Amendment of the United States Constitution and Section 6 of the Illinois Constitution. 3. Sergeant A failed to return Subject 2's phone to him upon release in violation of Rule 5.	UNFOUNDED UNFOUNDED UNFOUNDED

Approved:

Date

Deputy Chief Administrator – Chief Investigator A

Appendix A

Assigned Investigative Staff

Squad#: X

Investigator: Investigator A

Supervising Investigator: Supervising Investigator A

Deputy Chief Administrator: Deputy Chief Administrator A